

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513**

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Mailed: October 31, 2002

Cancellation No. 31,904

Bell, Inc.

v.

Bell Packaging Corp.

This case now comes up for consideration of petitioner's motion (filed October 2, 2002) for summary judgment. Summary judgment motions should be filed prior to the commencement of the plaintiff's testimony period. Trademark Rule 2.127(e)(1). If testimony periods are reset prior to the opening of the plaintiff's testimony period-in-chief, a motion for summary judgment filed before a first trial period opens is timely. However, once the first trial period opens any summary judgment motion filed thereafter is

untimely, even if it is filed prior to the opening of a rescheduled testimony period-in-chief for plaintiff. See *La Maur, Inc. v. Bagwells Enterprises, Inc.*, 193 USPQ 234 (Comm'r 1976); T. Jeffrey Quinn, *TIPS FROM THE TTAB: Inter Partes Summary Judgment Revisited*, 76 Trademark Rep. 73, at 73-74 (1986); and TBMP § 528.02.

In this case, on May 29, 2001, the Board issued an order setting discovery and trial dates. Petitioner's testimony period was set to close on March 15, 2002. Under this schedule, petitioner's testimony period was set to open on February 13, 2002. Thereafter, on March 1, 2002, respondent filed a consented motion to extend the trial dates. Although the motion resulted in a resetting of the trial dates, the motion did not serve to toll or suspend proceedings, nor did petitioner request a suspension or extension of time prior to the February 13 opening of its testimony period. Therefore, the resetting of the testimony periods on March 1, 2002 did not operate to extend the time in which a timely summary judgment motion could have been filed. Moreover, as last reset plaintiff's testimony period was set to open on September 21, 2002 several days prior to the filing of plaintiff's summary judgment motion.

Accordingly, petitioner's motion for summary judgment is denied as untimely.¹

Trial dates are reset as indicated below.

30-day testimony period for party in
position of plaintiff to close: 12/15/02

30-day testimony period for party in
position of defendant to close: 2/13/03

15-day rebuttal testimony period for
plaintiff to close: 3/30/03

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within 30 days after completion of the taking of testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

***By the Trademark Trial
and Appeal Board***

¹ Petitioner should note that the evidence submitted in connection with the motion for summary judgment is of record only for consideration of that motion. Any such evidence to be considered at final hearing must be properly introduced in evidence during the appropriate trial period. See *Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993); *Pet Inc. v. Bassetti*, 219 USPQ 911 (TTAB 1983); and *American Meat Institute v. Horace W. Longacre, Inc.*, 211 USPQ 712 (TTAB 1981).